

COLORADANS FOR METRO

DISTRICT REFORM

November 5, 2021

Draft Legislation Proposals 2022 Session

These proposals are limited to metropolitan districts created for the purpose of developing residential communities. They do not apply to commercial, business, or industrial development. In cases of mixed developments, these proposals only apply to the residential portion of mixed developments.

There are 7 proposed bills which are easily combined:

1. "Metropolitan District Service Plan Reforms"
2. "Eliminate Conflicts of Interest In Metropolitan District Governance"
3. "Ensuring Financial Accountability for Metropolitan Districts"
4. "Establishing Right to Citizen Initiative in Metropolitan Districts"
5. " 'Truth-in-Buying' Disclosures for Metropolitan Districts"
6. "Conflict of Interest Disclosures for Meetings and Control by Residents"
7. "Audit of Metropolitan Districts and Operation of Title 32"

1. Bill - "Metropolitan District Service Plan Reforms"

- Prohibit more than one district for each area of residential development - typically defined in terms of a development plan for a new residential community
 - i.e. Highlands Ranch, Solterra, Sterling Ranch
 - Note it does not prohibit separate districts for commercial or retail
- Allow very limited exceptions where the substantive level of service will be different
 - i.e. some homes will be serviced by private septic system and others by district provided sewer
- Each district must independently qualify under CRS 32-1-203
- Debt may not be authorized in the Service Plan exceeding 50% of the assessed value at the time of the Service Plan approval unless and until both of the following conditions are satisfied: 1) at least 20% of the residential units to be created in the development plan have been conveyed to end users; and 2) no members of the Board have qualified through the provisions of CRS 32-1-808(2) or are affiliated with the developer.
- The Service Plan shall expressly state that TABOR shall apply and that there shall be no TABOR election until 1) at least 20% of the residential units to be created in the development plan have been conveyed to end users; and 2) no members of the Board have qualified through the provisions of CRS 32-1-808(2) or are affiliated with the developer.

2. Bill - "Eliminate Conflicts of Interest In Metropolitan District Governance"

- Ballot issues shall not be submitted to voters for approval unless they are approved by a 100% resident non-developer affiliated board.
 - For example, in the initial ballot, the developer gives himself the exclusive right as the district board to issue debt - it does not go to a vote of the residents as required by TABOR - see CRS 32-1-110 (2). If the taxpaying residents want to vote to approve this limitation on their right to vote on issuing new debt once they move in, they can. But it is unlawful for the developer to give himself that right to the exclusion of the residents.)
- In new applications for metro districts, expressly prohibit single party conflict of interest IGAs between developer as developer and developer as district regarding
 - 1.) finances and operational control of the district and
 - 2.) establishing a controlling authority separate from the district boards.
- In current metropolitan districts, these single party conflict of interest IGAs are presumed to be executed under a conflict of interest and therefore voidable at any time. This presumption may be rebutted only upon a showing that the district was controlled by board members not affiliated with the developer at the time the IGA was executed.
- In every current metropolitan district, the district shall issue amended IGAs for every current IGA that constitutes a single party agreement between the developer as developer and developer as districts and single party agreement between the districts where the developer controls the boards of each district. The amended IGA shall state in all capital letters at the top "This agreement is voidable at any time" and state the date of the amendment. The amended IGA shall be emailed or sent by regular mail to every resident of the district.

3. Bill - "Ensuring Financial Accountability for Metropolitan Districts"

(Note: Purpose is to provide oversight and accountability at the most critical time - when the money is being spent. It is the same kind of oversight that a bank loan officer would provide or residents could exercise if they were present. Disclosure should help curb abuses. When the residents arrive, the information will be readily available to check before bonds are issued.)

- Any payments assigned to be approved and qualified for infrastructure must be supported by detailed invoices and project labels before being paid.
- Require districts to withhold payment for work done on behalf of the district until detailed original vendor invoices showing labor costs, hours, materials and the specific geographic and functional area of work (i.e installing electrical conduits at NW boundary).
 - (Note: Often developer districts will just get a bottom line number from the developer - they are one in the same. The developer uses this procedure to avoid exposing the cost details to independent verification. The district number is public. The vendor detail submitted to the developer is arguably private. This provision will compel district to have available for inspection the detailed invoices from vendors to developer. The developer requires the detail before he pays vendor bills. The residents are entitled to the same detail before paying the developer bills.)
- Require retention (for a period six years after no members of the District's board are affiliated with an initial developer) and disclosure, upon request by any member of the public, city/county creating the district or any state governmental agency, of every detailed original vendor invoice paid for infrastructure build out and operation of the metro district.
- Require districts to disclose for review on a public district website page, every payment made for infrastructure or operational costs at least 14 days after payment is made by the district in the order they were paid.
- Any non-district payments for infrastructure (i.e. developer "advances") must be recorded as future liabilities on the metro district balance sheet financials.

4. Bill - "Establishing Right to Citizen Initiative in Metropolitan Districts"

- Expressly provide for right of citizen initiatives at any time by residents
- Follow procedures for citizen initiatives set forth in city/county that creates the metro district
- Alternatively, create a new procedure for metro district citizen initiatives

5. Bill - " 'Truth-in-Buying' Disclosures for Metropolitan Districts"

- Simple and easy to understand disclosures created for every new and existing district
- Verified by independent (DOLA) agency (Funded with State filing fee).
- On file with the city/county which created the metro district (require city/county to maintain a current list of all districts and "truth in buying" disclosure for each district)
- Realtors are currently asking for this information. Coordinate with realtor organizations to make the disclosures available on MLS
- Make the disclosures available at each contact with potential homebuyer
 - at the first point of contact (sales office of new developments or real estate agents),
 - when the offer by the homebuyer is submitted (before it is accepted by the homebuilder or developer),
 - at the time of the disclosures regarding the condition of the property (between offer and closing) and
 - at the time of closing.
- Content of the disclosure:

METROPOLITAN DISTRICT DISCLOSURE STATEMENT

The property that you are purchasing is located in one or more metropolitan districts. A metropolitan district is a special taxing district that may be used to either finance infrastructure (roads, water and sewer lines, parks and landscaping for example) or provide services (water, sewer, fire protection, parks and recreation, and landscape maintenance for example) or both. Properties in metropolitan districts may be subject to significantly higher property tax rates than other properties in order to pay developer debt, and may also be subject to additional fees, taxes and assessments. This statement is intended to assist you in understanding the potential tax consequences of purchasing property in a metropolitan district. Once you purchase a property in a metropolitan district you immediately have the right to serve on the board, which will be developer controlled until enough residents self-nominate to sit on the board. In most cases the developer has a conflict of interest with the residents in making taxing and spending decisions for the district.

(All this information is readily available from documents filed with DOLA or the documents prepared by the developer or his agents in forming the district):

Name of Metropolitan District : _____

Authorized Debt: \$_____ (total); \$_____ per home (if developed)

Current debt issued (include all potential debt, including contract debt, reimbursement agreements, IGAs, etc.)

Amount: \$_____ \$_____ per home (at present)

Proposed debt in 5 years \$_____ \$_____per home

Proposed debt in 10 years \$_____ \$_____per home

Debt to assessed value ratio: (should be 30% or less for well-funded districts; over 50% may mean the District will have difficulty paying its debt).

Most recent fiscal year: _____% If all authorized debt is issued: _____%

Maximum mill levy: _____ * Maximum annual taxes for \$500,000 home: \$_____ **

Projected taxes you will pay through maturity of district debt: \$_____

(* use service plan maximum) (**use typical home in district)

Most recent mill levy: _____ Current annual taxes for \$500,000 home: _____

Projected mill levy in 5 yrs: _____

Projected annual taxes for \$500,000 home in 5 yrs: \$_____

Estimated final maturity of debt: _____

Fees imposed by the District: \$_____ per _____ (i.e., month, quarter, year)

Other taxes or assessments imposed by the District (per home per year): _____

Total current tax (developer debt plus school, city, county, fire, other): _____

Percentage of developer debt tax to all other property taxes: _____

6. Bill - "Conflict of Interest Disclosures for Meetings and Control by Residents"

- Require that the developer board issue an agenda and board packet for every meeting emailed and regular mailed to each resident which contains a separate prominent disclosure that
 - The developer affiliated board has a conflict of interest with the residents (as disclosed in every audit)
 - The residents have a right to serve on the board
 - Enclose a self-nomination form with instructions to fill it out and send it to the district manager and counsel if the resident would like to serve on the board
- Provide a mechanism whereby any board member who is not a resident and is serving on the board pursuant to CRS 32-1-808(2) shall be immediately ineligible (creating a vacancy) to serve on the board once a resident submits a self-nomination form. Where the resident is the only person submitting a nomination form, that person shall immediately be appointed to fill the vacancy. If more than one resident self-nominates, then the board shall schedule an election for that position.

[We have language drafted for this provision]

7. Bill - "Audit of Metropolitan Districts and Operation of Title 32"

- Investigate and research the need for metro district financing for new residential developments
- Compare the cost effectiveness of the traditional method of repaying infrastructure costs for new residential developments with the metro district financing under Title 32
 - the traditional method includes the proportional cost of the land, cost of the infrastructure and profit in the cost of the developed lot
 - The developer recovers his costs and profit when he sells the developed lot to a builder or homeowner
 - The cost of the infrastructure is paid for in the cost of the home
 - In calculating the cost of metro district financing, include the cost of the principal and interest on the "loan" from the developer, the cost of the principal and interest on the "loan" [bond] from the bond investors, the cost of management for the metro district, the cost of legal services for the metro district, the cost of engineering services for the metro district, the cost for accountants for the metro district
- Calculate the percentage of taxes paid to reduce metro district debt to all taxes paid
- Compare the amount of taxes paid for similar homes in non-metro districts
- Compare the cost of similar homes in non-metro districts
- Research a representative sample (no less than 6) of metro districts for double billing of infrastructure costs
 - identify with verifiable documentation the cost of the land actually paid by the developer
 - Identify with verifiable documentation the cost of the infrastructure for the residential development actually paid by the developer (reference the industry average of \$30,000 per lot and the estimate in the financial plan attached to the Service Plan application for a benchmark)
 - Identify with verifiable documentation the income actually received by the developer for the cost of the developed lot sold to the builder or homeowner
 - Calculate the profit paid to the developer in selling the developed lot to the builder or homeowner
 - Calculate the additional money paid to the developer through metro district financing
- Evaluate alternative mechanisms of recovering unearned profits through metro district financing
 - attorney general prosecutions
 - Private attorney general actions

- Private cause of action with 30 year statute of limitations
 - Private cause of action with simplified class action status
- Require all current districts and applications for districts provide verifiable documentation establishing the cost of the land for the district. (This data will help evaluate whether or not infrastructure cost is already recovered in cost of developed lot. The information is not private.)
- Require all current districts and applications for districts provide verifiable documentation showing the income received for the sale of each developed lot prior to construction of the home. (This data will help evaluate whether or not infrastructure cost is already recovered in cost of developed lot. The information is not private.)